

BRB No. 09-0327 BLA

ALICE REEDY)	
(Widow of WANDA REEDY))	
)	
Claimant-Respondent)	
)	
v.)	
)	
CLINCHFIELD COAL COMPANY)	DATE ISSUED: 11/18/2009
)	
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Ryan C. Gilligan (Wolfe Williams Rutherford & Reynolds), Norton, Virginia, for claimant.

Timothy W. Gresham (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

Helen H. Cox (Deborah Greenfield, Acting Deputy Solicitor; Rae Ellen Frank James, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2008-BLA-5224) of Administrative Law Judge Linda S. Chapman rendered on a survivor's claim¹ filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* Finding that complicated pneumoconiosis was established in the miner's claim at 20 C.F.R. §718.304, 30 U.S.C. §921(c)(3),² the administrative law judge applied the doctrine of collateral estoppel to this survivor's claim to find that complicated pneumoconiosis was also established in the survivor's claim. The administrative law judge, therefore, concluded that claimant was entitled to the irrebuttable presumption that the miner's death was due to pneumoconiosis at Section 718.304. Benefits were, according, awarded in the survivor's claim.

On appeal, employer argues that the administrative law judge erred in applying the doctrine of collateral estoppel to bar relitigation of the issue of complicated pneumoconiosis in the survivor's claim and in awarding benefits in the survivor's claim based on the finding of complicated pneumoconiosis made in the miner's claim. Employer argues that the doctrine of collateral estoppel does not apply because the issue of death due to pneumoconiosis was not present in the miner's claim. Thus, employer contends that because the issues in the miner's and the survivor's claims are not identical, the doctrine of collateral estoppel cannot be applied in this case. Claimant responds, urging affirmance of the administrative law judge's award of benefits in the survivor's claim. The Director, Office of Workers' Compensation Programs (the Director), by letter, asserts that the administrative law judge properly applied the doctrine of collateral estoppel to preclude the relitigation of the issue of complicated pneumoconiosis in the survivor's claim, which was the identical issue that was resolved in the miner's claim. Consequently, the Director asserts that the administrative law judge properly found claimant entitled to benefits in her survivor's claim.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence,

¹ Claimant, is the widow of the miner, who was awarded lifetime benefits by Administrative Law Judge Daniel F. Solomon in a Decision and Order dated March 31, 2005. The miner died on January 11, 2007. Claimant filed her claim for survivor's benefits on March 5, 2007. Director's Exhibit 2.

² Judge Solomon found that the miner established the existence of complicated pneumoconiosis and was, therefore, entitled to the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304, 30 U.S.C. §921(c)(3).

and in accordance with applicable law.³ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

After consideration of the administrative law judge’s Decision and Order, the arguments raised on appeal, and the evidence of record, we conclude that the administrative law judge’s decision awarding benefits in the survivor’s claim is rational, supported by substantial evidence, and in accordance with law. The administrative law judge’s Decision and Order awarding benefits is, therefore, affirmed. We agree with the Director that, “[t]he factual determination that the evidence establishes the lung disease [complicated pneumoconiosis] described in Section 718.304 sufficient to invoke the irrebuttable presumption is the issue that is identical in both [the miner’s and the survivor’s] claims.” Director’s Brief at 2. Thus, contrary to employer’s assertion, the issue of complicated pneumoconiosis, which was established in the miner’s claim, must also be resolved in the survivor’s claim, and claimant is entitled to the irrebuttable presumption of death due to pneumoconiosis if the existence of complicated pneumoconiosis is established. 20 C.F.R. §718.304; *see Collins v. Pond Creek Mining Co.*, 468 F.3d 213, 221, 23 BLR 2-393, 2-400 (4th Cir. 2006); *Hughes v. Clinchfield Coal Co.*, 21 BLR 1-134, 1-137 (1999)(*en banc*). Employer’s argument is, accordingly, rejected.

Further, we reject employer’s contention that the administrative law judge’s application of the doctrine of collateral estoppel to preclude the litigation of claimant’s survivor’s claim is unfair. As the administrative law judge found, employer had the opportunity to fully litigate the issue of complicated pneumoconiosis in the miner’s claim. *See Collins*, 468 F.3d at 221, 23 BLR at 2-400; *Hughes*, 21 BLR at 1-137. Moreover, the United States Supreme Court has held that the irrebuttable presumption of death due to pneumoconiosis set forth in Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), reflects the intent of Congress to provide compensation to survivors of miners who had complicated pneumoconiosis, regardless of whether complicated pneumoconiosis actually resulted in death. *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 24 (1976); *see USX Corp. v. Director, OWCP [Lambert]*, 19 F.3d 1431, 18 BLR 2-210 (4th Cir. 1994); *Sumner v. Blue Diamond Coal Co.*, 12 BLR 1-74 (1988). Further, contrary to employer’s assertion, claimant’s decision to forego an autopsy of the miner is not inherently unfair to employer, as that is always a decision in the control of claimant.

³ This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as the miner was employed in the coal mining industry in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*).

Hence, the administrative law judge properly found that the doctrine of collateral estoppel applied in this survivor's claim to preclude relitigation of the issue of complicated pneumoconiosis and, therefore, properly found that claimant was entitled to the irrebuttable presumption that the miner's death was due to pneumoconiosis. Consequently, we affirm the administrative law judge's application of the doctrine of collateral estoppel in the survivor's claim, the administrative law judge's finding that claimant was entitled to the irrebuttable presumption that the miner's death was due to pneumoconiosis at Section 718.304, and the administrative law judge's award of benefits in the survivor's claim.

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge